possession of the blank book would necessarily support the inference of possession of the other book. If the accused had been doing something with the blank book or if it had contained entries similar to those in the other book there might well have been support for such an inference. But there was nothing of the sort. There was nothing to shew what he intended to do with the blank book and there was nothing written in it. It could be used for writing out lottery tickets but there was nothing so distinctive about it as to point to its being about to be used for such a purpose. All that could be said about it was that it was similar to a book which somebody using the same premises had used for the purposes of a lottery.

In the circumstances the conviction cannot stand. It will be set aside and an order of acquittal and discharge entered.

Appeal allowed.

CHEW CHENG LYE v. REG.

[A. Cr. J. (Whitton J.) November 2, 1956]

[Singapore — Magistrate's Appeal No. 157 of 1956]

Penal Code ss. 34 & 379 — Common intention — Criminal act done by several persons — Theft.

In this case the appellant and another person were charged with the offence of theft of a bicycle at the five foot-way of North Bridge Road. The facts shortly were as follows: About 5.30 p.m. on April 11, 1956 a police constable and a detective saw the appellant and the other man walking along Victoria Street and the officers' suspicions were aroused when they noticed the two men examining bicycles and conversing together. As a result of their suspicions they followed the men. The two men entered North Bridge Road. The other man walked along the five foot-way and when he came in front of house No. 359 North Bridge Road he placed his hand on a bicycle and started to push it along. The police constable ran towards him. The man then let go of the bicycle and ran away. The constable chased him and arrested him. Meanwhile the appellant who had been walking on the road near the drain, also started to run and was arrested by the detective. The other man and the appellant were both convicted of theft of the bicycle.

Held: (1) one of the requisite conditions to bring section 34 of the Penal Code into operation is that a criminal act is done by several persons and before the section can be applied there must therefore be more than a joint venture to commit a crime; it must be established that more than one person participated in the commission of the criminal act which forms the subject of the charge, although in certain circumstances mere presence may constitute participation; (2) in this case it had not been shown that the appellant had participated in the criminal act and therefore the conviction must be quashed.

Case referred to:—

(1) *Mahbub Shah v. R.* A.I.R. 1945 P.C. 118; L.R. 72 I.A. 148.

MAGISTRATE'S APPEAL.

Appellant in person.

S. E. Teh (Crown Counsel) for the respondent.

Whitton J.: — This appeal raises an unusual point in connection with the doctrine of common intention.

The appellant was convicted with another male Chinese, Chiang Koon Sun, of the theft of a bicycle on the five foot-way of North Bridge Road on 11th April 1956. The facts found by the learned District Judge — and in my view the evidence justified his findings — were, shortly as follows. About 5.30 p.m. on the day in question a police constable and a detective saw these two Chinese walking along Victoria Street and the officers' suspicions were aroused when they noticed the two men examining bicycles and conversing together. As a result of their suspicions they followed the men. The two Chinese entered North Bridge Road. Chiang walked along the five foot-way and when he came in front of house number 359 he placed his hand on a bicycle and started to push it along. The Police constable ran towards him. Chiang let go of the bicycle and ran away. The constable chased and arrested him. Meanwhile the appellant, who had been walking on the road near the drain, also started to run and was arrested by the detective.

On these facts the learned District Judge holding the doctrine of common intention applied convicted both the accused. He says: "I was satisfied on the evidence for the prosecution that this was a joint venture on the part of the accused and the other person. I found that the accused and the other person had set out that afternoon to steal bicycles. The actual moving of the particular bicycle in this case was done by the other accused person, but accused was present at the scene and he was clearly equally and jointly liable for the theft with the other person". I fully agree with this view of the facts, but to my mind the legal liability of the appellant is not quite so simple a matter as the District Judge appears to have thought. Section 34 of the Penal Code reads:—

"When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone."

The difficulty I find in its application to the present case is this. One of the requisite conditions to bring the section into operation is that "a criminal act is done by several persons." As *Ratanlal* says (Ed. 18 p. 60) it "contemplates the case where more persons than one share in the doing of the act". Now in the present instance the only criminal act was the moving (or theft) of the bicycle by Chiang. So even if it be conceded, as I think it can correctly be, that the common intention to steal bicycles, although there was no common intention

proved to steal this specific bicycle which was the subject of the charge, is sufficient to bring the appellant within the scope of the section, as far as intention is concerned, it does not in my view necessarily follow that the requirements of the rest of the section have been fulfilled. There would, of course, be no difficulty had it been shewn that the respondent had kept watch or otherwise assisted Chiang in the removal of the bicycle. But when the action is confined to a single act of pushing a bicycle by one of the accused it seems to me to be straining the language to say it is something done by several persons, even bearing in mind the definition in section 33. The learned Deputy supporting the District Judge's view cited a passage from the judgment of the Privy Council in *Mahbub Shah v. R.*[1] which reads :—

"To invoke the aid of section 34 successfully, it must be shewn that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act was done by him alone."

On the authority of this passage it may at first sight appear that in some cases at least a single act done by one person is sufficient to pin liability on all who share the common intention. Thus, for example, it would appear that if A, B and C lie in wait for X with the common intention of killing him, and if when the victim arrives at the spot A fatally stabs him with a knife, then all will be equally guilty though neither B or C raises a finger throughout the assault. My surmise is, however, that this apparent inconsistency between the wording of the section and its interpretation in *Mahbub Shah's*[1] case is explicable on the basis that once a common intention to kill has been formed mere presence at the subsequent killing constitutes participation in the criminal act since in the circumstances it is reasonable to presume such presence is in furtherance of the common object. But can it be said that mere presence on the roadway, even if one is planning the theft of a bicycle and knows one's companion has a similar intention, renders one a party under section 34 to an actual theft, in which one does not assist in any way, by one's companion? In my opinion before the section applies there must on the construction of its language be more than a joint venture to commit crime. I would say it must be established that more than one person participated in the commission of the criminal act which forms the subject of the charge, although in certain circumstances mere presence may constitute participation. In this case I do not think participation on the part of the appellant has been proved.

On these grounds I consider this appeal should be allowed, and I order accordingly.

Appeal allowed.

TEO PEEN SOON & ORS. v. REG.

[C. C. A. (Whyatt C.J., Knight and Tan Ah Tah JJ.) May 4, 1956]

[Singapore — Criminal Appeal No. 22 of 1955]

Court of Criminal Appeal Ordinance (Cap. 129), s. 6 — Verdict of jury which is unreasonable and cannot be supported having regard to the evidence — Duty of Court of Criminal Appeal to allow the appeal.

Investigation — 8 months delay before arrest — Identification — Unsatisfactory nature of the prosecution case. Summing-up — Accomplice's evidence. Alibi — Long delay — Result of.

This was an appeal by the appellants against their conviction for the offence of robbery. It was not suggested that there was any misdirection in the summing up of the learned Judge at the trial. The appellants appealed against the verdict of the jury on the ground that "the verdict was unreasonable or could not be supported having regard to the evidence."

The Court of Criminal Appeal in this case dealt with several unsatisfactory features of the case and came to the conclusion that the prosecution's case was not proved with that certainty which was necessary in order to justify a verdict of guilty and therefore the conviction could not be allowed to stand.

Ordinarily, where the jury have been properly directed by the learned trial Judge in his summing-up and in a case where the prosecution rely upon an accomplice's evidence, he has warned them strictly and with emphasis that they should not proceed upon the evidence of the accomplice unless it is corroborated, the Court of Criminal Appeal will not interfere if the jury convict. But if the Court thinks that the verdict is on the whole, having regard to everything that took place in the Court of trial, unsatisfactory, the conviction cannot be allowed to stand.

Observations on investigation, *alibi*, and identification.

Cases referred to :—

(1) *R. v. Barnes* 28 Cr. App. R. at p. 192.

(2) *R. v. Wallace* (1931), 23 Cr. App. R. 35.

COURT OF CRIMINAL APPEAL.

Appellants in person.

T. A. Mahony (Crown Counsel) for the respondent.

The judgment of the Court was delivered by :—

Whyatt C.J. : — The three appellants who appear in person were convicted at the October Assizes of the offence of robbery and were sentenced to substantial terms of imprisonment. They appeal against the verdict of the jury on the ground that it was against the weight of the evidence or, to state the ground more accurately in the light of a recent decision of this Court, on the ground that "the verdict is unreasonable or cannot be supported having regard to the evidence."

It is not suggested that there was any misdirection in the summing-up of the learned Judge. On the